IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1428/95 to 1450/95

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

HARIJAN VIRAM KESUR

Appearance:

1. First Appeal No. 1428/95 to 1435/95
MR H.L.Jani, A.G.P. for appellant-State.
MR YATIN SONI for Respondent No. 1

2. First Appeal No.1436/95 to 1443/95.
MR. M.R.Raval, A.G.P. for appellant-State.
MR. YATIN SONI for respondent No.1

3. First Appeal No.1144/95 to 1450/95
MR PG DESAI, G.P. for appellant-State.
MR YATIN SONI for respondent No.1

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 15/03/99

ORAL JUDGEMENT

1. These appeals which are instituted under Section 54 of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated September 6, 1993, rendered by the learned Assistant Judge, Porbandar, in Land Acquisition Cases No.20/89 to 42/89. All the abovereferred to Reference Cases were consolidated with Land Acquisition Case No.21/89 wherein parties had led common evidence. The land belonging to respondents situated in village Ghed Bagasra were placed under acquisition pursuant to publication of preliminary notification on January 26, 1978 under Section 4 (1) of the Land Acquisition Act. As common questions of facts and law are involved in this appeals, we propose to dispose of them by this common judgment.

2. A proposal to acquire agricultural lands of village Ghed Bagasra, Tal. Mangrol, Dist : Junagadh for public purpose of Amipur Irrigation Scheme was received by the State Government. On scrutiny of the said proposal the State Government was satisfied that the lands situated in the sim of village Ghed Bagasra were likely to be needed for the said public purpose. Accordingly notification under Section 4 (1) of the Land Acquisition Act, 1894 (" the Act" for short) was issued which was published in the Government gazette on January 26, 1978. In the said notification, lands which were proposed to be acquired were specified. The land owners whose lands were proposed to be acquired were served with notice under Section 4 of the Act and they had filed their objections against the proposed acquisition. After considering their objections, the Land Acquisition Officer had forwarded his report to the State Government as contemplated by Section 5 (A) (2) of the Act. On scrutiny of the said report, the State Government was satisfied that the lands specified in the notification published under Section 4 (1) of the Act were needed for public purpose of Amipur Irrigation Scheme. Therefore, declaration under Section 6 of the Act was made which was published in the Government gazette on October 26, 1978. The interest persons were thereafter served with notice under Section 9 of the Act for determination of Compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.650/- per Are, but having regard to the material placed before him, the Special Land Acquisition Officer by his award dated February 28, 1979, offered compensation to the claimants in some cases at the rate of Rs.100/- per Are and in some cases at the rate of

Rs.70/- per Are and also at the rate of Rs.20/- per Are in other cases. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, they made applications in writing requiring the Land Acquisition Officer to refer the matters to the Court for determination of compensation. Accordingly references were made to the District Court, Junagadh, which were numbered as Land Reference Case Nos.20/89 to 42/89. In the Reference Applications it was averred by the claimants that the claimants were raising different crops in the acquired lands and having regard to the income realized from the sale of agricultural produces, they were entitled to compensation at the rate of Rs.650/- per Are. According to claimants the market value of the acquired lands was not properly determined by the Land Acquisition Officer, and therefore, they were entitled to enhanced compensation.

3. All the Reference Cases were contested by the present appellants by filing written statement at Exh.15 in each case. In the reply it was pleaded that the market value determined by the Land Acquisition Officer was just as well as proper, and therefore, the Reference Applications should be dismissed. Upon rival assertions of the parties, necessary issues for determination were raised by the Reference Court at Exh.16. In order to substantiate the claim advanced in the Reference Applications, the claimants examined ;

1. Viram Keshur at Exh.27,
2. Lakhman Viram at Exh.28,
3. Ala Deva at Exh.29,
4. Badhabhai Hardasbhai at Exh.30 and
5. Somabhai Punjabhai at Exh.31.

The claimants also produced sale instances at Exh.20, 21 and 22. The present appellants did not lead either oral or documentary evidence in support of their case pleaded in the written statement. On appreciation of evidence, the Reference Court held that sale deed Exh.20 dated April 14, 1972, in respect of lands of village Kadegi indicated that the market value of the acquired land was Rs.114/- per Are, whereas Exh.21 which was in respect of land of village Badula showed that the market value of the acquired lands was Rs .187.50 and Exh.22 which was sale deed in respect of land of village Miti indicated that the market value of the acquired lands was Rs.125/- per Are. The Reference Court referred to the oral deposition of the witnesses examined on behalf of the claimants for the purpose of ascertaining income derived by the claimants from the sale of crops and held that annual average income from the lands

acquired was Rs.1,550/- per bigha. The Reference Court noticed that the claimants had tendency to exaggerate the income derived from the lands and ultimately held that the market value of the lands acquired on the date of publication of notification under Section 4 (1) of the Act was Rs.250/- per Are, by the common award dated September 6, 1993, giving rise to present appeals.

4. Mr. M.R.Raval, learned counsel for the appellants submitted that neither the vendor nor the vendee nor the scribe of sale deeds produced at Exh.20, 21 and 22 was examined, and therefore, those sale deeds could not have been relied upon by the Reference Court while ascertaining market value of the acquired lands. It was stressed that no cogent and reliable evidence was led by the claimants to establish income derived by them from the sale of agricultural produces, and therefore, yield method should not have been adopted by the Reference Court for the purpose of determining market value of the acquired lands. Learned counsel for the appellants asserted that the method of totalling different figures of income stated by the witnesses examined on behalf of the claimants and then dividing the said figure by number of witnesses, adopted by the reference court for the purpose of ascertaining market value of the acquired lands, was not only illegal, but not warranted by any of the methods known to law for the purpose of ascertaining market value of the acquired lands, and therefore, common award should be set aside. It was further stressed that in view of the judgments of the Supreme Court holding that 50 % should be deducted towards cultivation expenses and multiplier of more than ten should not be adopted while ascertaining market value of the acquired lands on yield basis, the appeals filed by the State Government and another should be accepted. What was pleaded by the learned counsel for the appellants was that the claimants did not establish before the reference court that they were deriving particular income from sale of agricultural produces, and therefore, references ought to have been dismissed by the reference court. In the alternative, the learned counsel vehemently submitted that the claimants are not entitled to additional compensation under Section 23 (1-A) of the Act, and therefore, the award made in favour of the claimants under section 23 (1-A) of the Act should be set aside, as the Land Acquisition Officer had made award prior to the coming into force of Act 68 of 1994 by which Section 23 (1-A) of the Act was inserted in the statute book. It was also pleaded that the claimants were also not entitled to solatium on additional amount of compensation payable under section 23 (1-A) of the Act

and, therefore, the direction given by the reference court to pay solatium on additional amount of compensation payable under section 23 (1-A) of the Act also deserves to be set aside.

5. Mr.C.L.Soni, learned counsel for the claimants pleaded that oral evidence adduced by the claimants regarding income derived by them from the sale of agricultural produces was never challenged by the appellants, and therefore, the appeals which are directed against a just and reasonable award of the reference court should be dismissed. The learned counsel for the claimants further highlighted that the sale instances were not available to enable the court to determine the market value of the acquired lands, and therefore, the reference court did not commit any error in placing reliance on the evidence of the claimants regarding income derived by them from the sale of agricultural produces while determining market value of the acquired lands. Learned counsel for the claimants placed reliance on the decision rendered in the case of State of Gujarat & Ors. vs. Rama Rana & Ors, 1997 (3) G.L.R. 1954 and submitted that the Supreme Court in the said case has upheld the determination of market value of the lands acquired in that case on the same basis as is adopted by the reference court in the present case subject to direction to deduct 50 % as cultivation expenses and to apply multiplier of 10, and therefore, the appeals filed by the State Government should be dismissed.

6. We have heard the learned counsel for the parties at length and also taken into consideration the record of the case. Learned counsel for the claimants has produced for our perusal the copy of the award of the reference court as well as judgment of the High Court from which case reported in 1997 (3) G.L.R. arose. From the judgment produced before us it is evident that agricultural lands of village Miti (Ghed), Tal. Mangrol, Dist : Junagadh were placed under acquisition pursuant to publication of notification on December 1, 1971, which was issued under Section 4 (1) of the Act. The Land Acquisition Officer therein had determined the market value of the lands acquired at different rates for different lands. In some cases he had determined the market price at Rs.3/- per Are; whereas he had determined market price at Rs.88/- per Are in other cases. The claimants had sought references and claimed compensation at the rate of Rs.625/- per Are. The reference court by common judgment and award dated September 15, 1993, had determined the market price of the lands acquired in that case at the rate of Rs.325/- per Are. The reference

court had totalled the figure of income stated by witnesses examined on behalf of the claimants and determined market value after dividing the said total by number of witnesses examined. Thereupon, the State of Gujarat and others had instituted First Appeal Nos.2530/95 to 2549/95, challenging the said common award.The matter had come up for hearing before the Division Bench comprising N.J.Pandya and S.K.Keshote,JJ. and the Division Bench had passed following order on September 22, 1995.

"The amount awarded by the trial court takes care of all the eventualities, when the basis is crop-yield method. He has, no doubt, noted that the witnesses are interested in giving exaggerated figures and he has also noted wide variations coming out of depositions of various claimants in the course of the deposition before the trial court. But, when on the basis of the data figure available with him he has reduced the Are value by slashing it down to almost one-third of the figure worked out on the basis of the material, there is no reason for this court to interfere. Hence, these appeals are rejected."

7. The order passed by the Division Bench was subjected to appeal before the Supreme Court and the judgment rendered by the Supreme Court in case of State of Gujarat and others vs. Rama Rana and others is reported in 1997 (3) G.L.R., 1954. The pertinent observations made by the Supreme Court in paragraph 5 of the reported judgment are as under :

"It is undoubtedly true that one of the methods of determination of compensation, in the absence of best evidence, namely, sale deeds, is the realised value of the crop. Normally, they should have produced the statistics from the Agriculture Department as to the nature of the crops and the prices prevailing at that time. But unfortunately, neither claimants nor the Government took any steps to adduce the best evidence. It is a fact that the Government has failed to adduce any evidence in that behalf. However, we cannot reject the oral evidence of the witnesses on that ground alone. The Court has statutory duty to the society to subject the oral evidence to great scrutiny, applying the test of normal prudent man, i.e., whether he would be willing to purchase the land at the rates proposed by the Court. On the touch-stone

of this, the Court should evaluate the evidence objectively and dispassionately and reach a finding on compensation. the reference Court has accepted the evidence of the Sarpanch to be that of a reliable person. Therefore, we proceed on that premise. The appropriate multiplier should be of 10 years as settled by several judgments of this Court. Necessarily, 50 % of the net value towards cultivation expension requires to be deducted. The award of the reference Court as confirmed by the High Court stands set aside and the value of the crop as determined by the reference Court at Rs.2,050/- as average annual income stands upheld. Multiplier of 10 years should be applied and deduction of 50 % towards cultivation expenses should be made. After giving deduction, the balance will be net value of the land. On that basis, the claimants are entitled to Rs.20,500 per acre with solatium @ 30 % on enhanced compensation and interest on enhanced compensation @ 0.9 % per annum for one year from the date of taking possession and 15 % per annum till date of deposit into the Court under the Act as amended by Act 68 of 1984, namely 30 % solatium on the enhanced compensation, interest on the enhanced compensation from the date of taking possession for one year at 9 % and thereafter at 15 % till date of deposit."

8. After the abovereferredto order was passed by the Supreme Court, the State of Gujarat and others had filed Review Petition Nos.1134-1153/97 in Civil Appeals No.16945-16964/96 and following order was passed by the Supreme Court on August 4, 1997 :-

"SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS.
Review Petition Nos.1134-1153/97 In Civil Appeals
No.16945-16964/96.
State of Gujarat & Ors.....Petitioners
vs.
Rama Rana & Ors .....Respondents.
(With appln. for c/delay in filing RPs and
clarification)
Date :4.81997.
Coram :
Hon'ble Mr.Justice S.C.Agrawal
Hon'ble Mr. Justice G.T.Nanavati.
For the Appellant(s)
Mr.Adhyaru Yashank Pravin, Adv.

Mrs.Hemantika Wani, Adv.
Ms.Sumita Hazarika, Adv.
For the Respondent(s)
Mr.Ranjit Kumar,Adv.
Mr.H.A.Raichura,Adv.
Upon hearing Counsel the court made the following
O R D E R
Delay condoned.
In the order dated December 13, 1996, at page 3 for the words "the claimants are entitled to Rs.20,500/per acre " the words " the claimants are entitled to Rs.10,250/- per bigha" shall be substituted. The review petitions are disposed of with this modification. No order as to costs.

Sd/- Sd/-
(Vijay Kumar Sharma) (Gopi Balaui)
Court Master Court Master

Signed order is placed on the file."

9. Thereafter, the State of Gujarat and others had filed I.A. Nos.41-60 in R.P. (C) Nos.1134-1153/97 in C.A.Nos.16945-16964/96 for clarification/modification of the order and those I.As were dismissed by order dated March 17, 1998.

10. It is undoubtedly true that one of the methods of determination of compensation in the absence of best evidence, namely, sale deeds, is the realised value of the crop and normally, the claimants should produce the statistics from the Agriculture Department as to the nature of the crops and the prices prevailing at the relevant time. But, unfortunately, neither claimants nor the Government took any steps to adduce that best evidence, namely, sale deeds. It is true that normally, the claimants should produce the statistics from the Agriculture Department to prove the nature of the crops and the prices prevailing at the relevant time. In the present case though the claimants had produced sale deeds at Exh.20 to 22, neither the vendor nor the vendee nor the scribe of any of the three deeds was examined, and therefore, those deeds are not relevant for determining market value of acquired lands. There is no manner of doubt that neither the claimants nor the Government took any steps to adduce that best evidence to enable the court to determine the market value of the acquired lands. It is also true that the claimants should adduce reliable evidence regarding income realized from crops. In normal circumstances, we would have remanded the matter to reference court with liberty to the parties to

lead evidence regarding income realized from the acquired lands because the average method adopted is hardly satisfactory. But remand of the matters at such a distance of time may not serve any purpose and in view of the order of the Supreme Court such a course is not warranted by the facts of the case. As observed by the Supreme Court in the above quoted decision, oral evidence of the witnesses regarding income from crops cannot be rejected as it is statutory duty of the court to the society to subject the oral evidence to great scrutiny and thereafter to determine market price of the acquired lands. We find that the facts before the Supreme Court and facts of the present case are almost identical. Here in this case also the reference court has accepted the evidence of Sarpanch Vikrambhai Rambhai at Exh.39 to be reliable one. The Supreme Court in similar circumstances relied upon the evidence of Sarpanch and determined the market value of the acquired lands. The evidence of Sarpanch Vikrambhai Rambhai recorded at Exh.39 would indicate that the claimants were able to raise 30 to 40 maund of cotton per bigha and the price of cotton per maund was roughly Rs.60 in the year 1977. His evidence further shows that the farmers who were cultivating crop of groundnut were able to raise 20 maund per bigha and in the year 1977 price of groundnut was Rs.50 to Rs.60. Witness Somabhai Punjabhai Exh.31 in his evidence claimed that the farmers were also growing wheat and gram and were able to raise 20 maund wheat or gram per bigha as the case may be, and price of wheat and gram per maund was between Rs.40/- to Rs.50/at the relevant time. We may state that though the Sarpanch and witness Somabhai were subjected to cross-examination, the evidence adduced by them regarding yield of the crops and income was not challenged by the appellants. On scrutinizing the evidence of Sarpanch and other witnesses, we find that the yearly income of the witnesses as stated by them would be Rs.8,200/-. Dividing this amount by total number of witnesses i.e. by 6, the yearly income per Are would be Rs.1300/-. The Supreme Court has laid down in catena of decisions that for the purpose of ascertaining market value of the acquired lands on yield basis, 50 % should be deducted towards cultivation expenses and multiplier of 10 should be adopted. If the formula laid down by the Supreme Court is applied to the facts of the present case, the market value of the acquired lands would come to Rs.406.20 per Are, but the reference court has awarded compensation to the claimants at the rate of Rs.250/- per Are which cannot be considered as either excessive or unreasonable at all. We may state that the claimants have neither filed appeals claiming more compensation than Rs.250/- per Are nor filed Cross

Objections in the appeals instituted by the State Government and another. Therefore, they are not entitled to more compensation than determined by the reference court, but the appeals filed by the State Government and another cannot be allowed when it is found that determination of compensation of acquired lands at the rate of Rs.250/per Are is not excessive at all. On the contrary, we notice that the determination of market value by the reference court will have to be upheld in view of the decision of the Supreme Court quoted above. Therefore, the appeals on the question of determination of compensation payable to the claimants cannot be accepted at all.

11. In the operative part of the impugned judgment and award, reference court has ordered that the acquiring authority shall pay additional compensation to the claimants as shown in Annexure-A attached to the judgment with running interest at the rate of 9% per annum for the first year from the date of award and for subsequent period till the date of payment, with running interest at the rate of 15 % per annum with proportionate costs. A bare look at Annexure-A which forms part of the impugned award makes it evident that the additional compensation determined by the reference court as payable, also includes solatium on the additional amount of compensation payable under Section 23 (1-A) of the Act. There is also no doubt that a direction to pay additional amount of compensation as envisaged by Sections 23 (1-A) of the Act is given. Such directions could not have been given in view of the judgment of the Supreme Court rendered in the case of State of Maharashtra v. Maharau Srawan Hatkar, Judgment Today 1995 (2) SC 583. The pertinent observations made by the Supreme Court in para-7 of the reported decision are as under :-

> "It would thus be seen that the additional amounts envisaged under sub-ss. (1-A) and (2) of S.23 are not part of the component of the compensation awarded under sub-s. (1) of S.23 of the Act. They are only in addition to the market value of the land. The payment of interest also is only consequential to the enhancement of the compensation. In a case where the Court has not enhanced the compensation on reference, the Court is devoid of power to award any interest under S.28 of the spreading of payment of interest for one year from the date of taking possession at 9 % and 15 % thereafter till date of payment into the Court as envisaged under the proviso. "

12. Therefore, the operative part of the order in so far as it directs the appellants to pay the amounts envisaged under section 23 (1-A) and solatium under section 23 (2) of the Act on the amount payable under section 23 (1-A) of the Act, is concerned, will have to be set aside and is hereby set aside.

13. For the foregoing reasons, all the appeals are partly allowed. It is held that the claimants are entitled to compensation at the rate of Rs.250/-per Are. It is further held that the claimants shall not be entitled to additional compensation as envisaged under Section 23 (1-A) of the Act nor to the solatium on the additional amount of compensation payable under section 23 (1-A) of the Act. Rest of the award is not disturbed at all. There shall be no order as to costs. Office is directed to draw decree in terms of this judgment.

* * *

mithabhai